IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 191 OF 2005
IN
SUIT NO. 3631 OF 2004.

Arti Dhananjay Chonkar. ... Plaintiff.

V/s.

Kishorkumar Khanderao Pitale. ... Defendant.

D.G.Aras i/b. Aras & Co. for the plaintiff.

A.A.Mirza for the defendant.

CORAM: V.C.DAGA, J.

DATED: 8th February 2006.

P.C.:

. This motion was taken out by the plaintiff somewhere in the month of January, 2005. The defendant was served with the motion, immediately, thereafter. In spite of more than one year no counter affidavit or reply has been filed.

2. Even today, learned counsel for the defendant is appearing in this Court without any brief and seeks adjournment. No sufficient cause is made out for adjournment. Prayer for adjournment is, thus, refused.

3. Having gone through the affidavit in support of the notice of motion, plaintiff has made out prima facie case for appointment of Court

Receiver. It would be just, proper; and in the interest of justice to appoint Court Receiver in respect of the premises, i.e., Flat No.101, B/6, Shantishri CHS Ltd., Ashokvan, Shiv Vallabh Road, Borivli (West), Mumbai- 400 066 ("suit premises" for short). Accordingly, Court Receiver, High Court is appointed as a Receiver in respect of the aforesaid suit premises.

4. The Receiver is directed to take symbolic possession of the suit property and fix royalty for occupation of the premises. The Court Receiver may give first preference to the present occupant/ defendant to opt for the premises. In the event the defendant refuses to offer payment of royalty as fixed, it would be open for the Court Receiver to induct any other person, offering the amount of royalty as fixed, in the premises as licensee, pending the hearing and disposal of the suit without prejudice to the rights of either of the parties.

5. The plaintiff by way of prayer (b) is also seeking injunction against the defendant from dealing with; disposing of; and alienating or creating third party interest in any manner

whatsoever in the suit premises. In view of absence of any contest to the said prayer and considering consensus between the parties, injunction in terms of prayer clause (b) is granted.

6. In view of this order, prayer clause (c) does not survive.

7. Notice of motion is made absolute in terms of prayer clauses (a) and (b) with no order as to costs.

8. At this stage, learned counsel for the defendant prays for stay of this order. Prayer for stay is refused.

(V.C.DAGA, J.)